IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1017 of 1995

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RATILAL LAKHABHAI GAMIT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1017 of 1995
MS BANNA S DUTTA, Advocate for Appellant
MR K.P.RAVAL, ADDL. PUBLIC PROSECUTOR for Respondent

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellant challenges his conviction under the provisions of Section 302 of the Indian Penal Code for double murder, and the sentence of life imprisonment with fine of Rs.500=00, in default, further simple imprisonment for a period of one month, imposed on him by the learned Additional Sessions Judge, Surat, at Vyara, on 7-10-1995 in Sessions case No. 91 of 1994.

2. The prosecution version in brief is that, on 24th December 1993, at about 1.30 p.m., after the midnight, the accused, on seeing his wife Ramani and deceased Raman Bhurji lying together unclad, in the field of Jethiya Devji behind his house, gave axe blows to both of them causing serious injuries resulting in their death. According to the prosecution, the injuries with a lethal weapon like axe were inflicted on these persons with an intention to cause their death and therefore, the accused committed an offence of murder punishable under Section 302 of the Indian Penal Code.

3. The learned trial Judge, on the basis of the material on record, came to a finding that the accused killed his wife and her paramour on seeing them sleeping together in the open field behind his house and in that regard, he made an extra judicial confession before witness Vasantbhai, which fact was supported by other witnesses. The trial Judge also noted that the discovery of the axe with which the accused had inflicted blows on the two deceased persons was made at the instance of the accused under the panchnama exh.25, which was proved in the deposition of the panch witness Ashwin at exh.25. He also took note of the fact that when the prosecution witnesses reached the scene of offence, Raman Bhuraji was alive, lying there injured and he had muttered that the accused had given him the blows. Finding the accused guilty of intentionally causing death of these two persons, the trial Judge found that there was no grave and sudden provocation that would justify invoking Exception I to section 300 of the Indian Penal Code. This he concluded in paragraph 35 of his judgement in which he resorted to the reasoning that, from the map exh.20, it appeared that there was some distance between the house of the accused and the scene of the offence and that the fact that the accused came armed with an axe with him at that hour of night would show that he must be knowing about the relationship and had proceeded to the scene of offence with a deliberate and calculated move to cause death of these two persons. That is how the trial court found the accused guilty of the offence under

Section 302 of the Indian Penal Code and sentenced him to life term and fine as noted above.

4. The only contention that was raised before us, in the background of the facts found and the nature of the material on record, was that the case would attract the provisions of Exception I to Section 300 of the Indian Penal Code, because, finding his wife and her paramour lying unclad in the open field behind his house, the accused would have lost his temper and in a fit of such deranged state of mind, he would have inflicted the lethal blows on both these persons, causing their death. The learned Additional Public Prosecutor, on the other hand, supported the reasoning adopted by the trial Court.

5. We have been taken through the evidence on record, which clearly discloses that the accused, soon after the incident, met Vasantbhai Gamit, who at the relevant time, was sitting by a bonfire due to the chilly night and while standing near Vasantji, he told him that he had killed Raman and Ramani in the field of Jetha Devji. The accused also told him that he will go and report to the Bardoli police station. Thereupon, this witness Vasantbhai, who has deposed at exh.11, went to the house of Ramani's father Harjibhai and woke him up and informed him about the incident. Harjibhai was the maternal uncle of this witness. His cousins Mohan and Divanji had thereafter gone to the Sarpanch Mavjibhai. In his cross-examination, he has asserted that the accused had made the extra judicial confession to him. Even from his earlier police statement with which he was confronted and which has been proved in the deposition of the investigating officer, it is clear that there is no material contradiction between his version before the police and before the Court. It is clearly established from his deposition that the accused did come near him soon after killing Raman and Ramani, and disclosed to him that he had finished them off in the field of Jethiya Devji. It is established from the arrest panchnama exh.18 that the accused in fact presented himself to the Bardoli police station on the next day. This fact clearly supports the version of Vasantbhai about the accused having told him that he would go and report to the Bardoli police station.

5.1 Mavjibhai, who was the Sarpanch and to whom Mohan and Divanji had gone to inform him about the incident, has, in his deposition exh.9, fully supported the version of Vasantbhai and in terms stated that, after he was informed about the incident, he had gone and verified from Vasantbhai as to whether he had given the aforesaid

version of the extra judicial confession made to him by the accused. In paragraph 2 of his cross-examination, he has asserted that Vasantji had admitted before him that he had spoken about the extra judicial confession by the accused, as narrated to this witness. Thereafter, this witness went to the scene of offence where he found that Raman was lying injured and was asking for tea.

5.2 The fact that Raman Bhuraji was still alive when the witnesses reached the scene of the offence emanates also from the deposition of Thakorbhai, who was police patel and who has in terms stated in his deposition exh. 24, that he reached Jethiya Devji's field and saw that Ramani was already dead, but Raman Bhuraji was muttering that he was beaten by Ratilal. Raman and Ramani were lying by the side of each other. He has spoken about the injuries which he noticed on their bodies.

5.3 Witness Divanji in his deposition exh.22 has stated that he and Mohan had gone to the Sarpanch and informed him about the incident and thereafter, they had gone to the police patel Thakorbhai. This witness has also stated that when they reached the field of Jethiya Devaji, Ramanbhai was alive and was asking for water. Divanji was the brother of deceased Ramani. He has stated that when he reached the field, he had found that the clothes of his sister were torn and bloodstained.

5.4 Then there is discovery panchnama exh.26, which is proved in the deposition of Ashwin, a panch witness, who has deposed at exh.25. As per this piece of evidence, the axe with which the lethal blows were given by the accused was discovered at his instance. The blade of the axe was proved to have been having stains of human blood, but since the blows were simultaneously inflicted on two different persons, the blood group could not be finally ascertained.

6. The nature of evidence which is on record thus, clearly establishes that the accused, armed with an axe, had gone around 1.30 a.m. during the night between 23rd and 24th December 1993 behind his house and finding his wife Ramani and her paramour Raman lying together in the field of Jiva, inflicted axe blows on both of them causing very serious injuries that resulted in their death. The nature of injuries clearly spells out the intention of the accused to cause death of both these persons. These injuries are mentioned at items 17 and 20 of the two post-mortem notes, which have been proved in the deposition of Dr. Natvarlal at exh.6, who also has given details of these serious wounds inflicted by the

accused on both these persons, which we need not repeat.

7. The question, therefore, now remains as to whether the facts and circumstances of the case justify invoking of the Exception 1 to Section 300 of the Indian Penal Code, which provides that, culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. This exception is subject to the proviso which, inter alia, provided that the Exception I will operate if the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

8. In the present case, it is nobody's case that the provocation was sought by the accused or provocation was caused at the instance of the offender as an excuse for killing or doing harm to any person. The question, therefore, remains as to whether what the accused saw just before he inflicted the axe blows could have had the effect of depriving him of the power of self-control.

9. It is established from the facts which are proved in this case that the accused, after the midnight, not finding his wife at his residence at night moved out of his house with an axe, which is a normal agricultural implement carried by farmers, and went behind his house in the field of Jethiya Devji, where he found his wife and Raman lying together unclad. On seeing this he would have lost the power of self-control, because, that very sight would have provided him grave and sudden provocation; and in that deranged state of mind, he inflicted severe blows with the axe on both the persons, resulting in their death.

9.1 As held by the Supreme Court in State of U.P. v. Lakhmi, reported in AIR 1998 SC 1007, there could be little doubt that if the accused husband had witnessed any such scene, his mind would have become suddenly deranged, and that it is not necessary that a husband should have been hot-tampered or hypersensitive to lose his equanimity by witnessing such scenes. Any ordinary man with normal senses or even sangfroid would be outraged at such a scene (See paragraph 20 of the judgement). In that case, the deceased was a young wife of the accused. They had two little children living together in the house of the respondent. From the features which emanated in the evidence (See para-18 of the judgment), the Supreme Court, in paragraph 19 of the

judgement, found that those features positively suggested that the accused would have seen something lascivious between his wife and PW-2 Ramey just when he entered the house from the field, and in that context it was held that there could be little doubt that if the accused had witnessed any such scene, his mind would have become suddenly deranged. The benefit of Exception I to Section 300 IPC was given to the accused.

9.2 A Division Bench of the Madras High Court, in a case where the husband found the wife in illicit co-habitation with the younger brother of the accused and the accused caused his death, held that the accused had grave and sudden provocation which would make Exception I to Section 300 of the IPC applicable.(See re Govindan, reported in 1975 CRI. L.J. 114).]

10. The trial Court was, therefore, not justified in denying the benefit of Exception I to Section 300 of the Indian Penal Code to the accused on the ground that there was some distance between the house of the accused and the field in which these two persons were assailed by him and that he came with the axe. A bare look at the map exh.20 shows that the field of Jethiya Devaji was quite near the house of the accused. Merely because he carried an axe, it cannot be said that he had come out with a deliberate and calculated move of killing both these persons. In our opinion, the case of the accused clearly fell within Exception I to Section 300 of the Indian Penal Code.

11. The nature of injuries which were caused by the appellant to both the deceased positively suggest that they were caused with an intention of causing death of Raman and Ramani. These injuries were sufficient in the ordinary course of nature to cause death of both the deceased since they were inflicted on the vital parts of their bodies. Therefore, while the appellant accused is entitled to the benefit of Exception I to Section 300 of the Indian Penal Code, this case would squarely fall within the first part of Section 304 of the IPC, which makes such offence punishable with imprisonment for life or imprisonment of either description for a term which may extend to ten years, and find. Having regard to the facts established in this case, we are of the view that the sentence of imprisonment of ten years and fine as already ordered by the the trial Court would serve the ends of justice. The conviction and sentence imposed for the offence under Section 302 of the I.P.C. on the accused will therefore have to be altered by partly allowing this appeal.

12. For the foregoing reasons, we partly allow the appeal and alter the conviction of the appellant from Section 302 of the Indian Penal Code to Section 304 Part-I and impose the sentence of ten years' rigorous imprisonment and retain the fine and sentence in the alternative to non-payment of fine as imposed by the trial Court, for the offence under Section 304, Part-I of the Indian Penal Code.

[J.N.BHATT, ACTING C.J.]

[R.K.ABICHANDANI, J.]

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